

UNITED STATES DISTRICT COURT FOR
THE DISTRICT OF MASSACHUSETTS

ELIZABETH R. LEWIS,)	
)	
Plaintiff,)	
)	
)	Civil Action
vs.)	No. 13-11896-RWZ
)	
WELLS FARGO BANK, N.A., et)	
al.)	
)	
Defendants.)	

MOTION HEARING

BEFORE THE HONORABLE RYA W. ZOBEL
UNITED STATES DISTRICT COURT JUDGE

UNITED STATES DISTRICT COURT
John J. Moakley U.S. Courthouse
1 Courthouse Way
Boston, Massachusetts 02210
November 26, 2013
2:00 p.m.

* * * *

CATHERINE A. HANDEL, RPR-CM, CRR
Official Court Reporter
John J. Moakley U.S. Courthouse
1 Courthouse Way
Boston, Massachusetts 02210
(617) 261-0555

2 APPEARANCES:

3 For the Plaintiff:

4 LAW OFFICE OF GLENN F. RUSSELL, JR.

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9 For the Defendants:

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P R O C E E D I N G S

(The following proceedings were held in open court before the Honorable Rya W. Zobel, United States District Judge, United States District Court, District of Massachusetts, at the John J. Moakley United States Courthouse, 1 Courthouse Way, Boston, Massachusetts, on November 26, 2013.)

THE COURT: Good afternoon. Please be seated.

MR. BIZAR: Good afternoon, your Honor.

COURTROOM DEPUTY CLERK URSO: This is Elizabeth Lewis versus Wells Fargo, Civil 13-11896. If counsel could please identify themselves for the record, please.

MR. RUSSELL: Good afternoon, your Honor. Glenn Russell, Jr., on behalf of Elizabeth R. Lewis, the plaintiff.

THE COURT: I'm sorry, you're Mr. Russell?

MR. RUSSELL: Yes, your Honor.

MR. BIZAR: Good afternoon, your Honor. David Bizar for the defendant, Wells Fargo.

THE COURT: There are two motions, one of which is, I gather, not ripe, which is the motion to dismiss, right?

MR. BIZAR: The motion to dismiss is not calendared for today, your Honor.

THE COURT: I understand that, but it seems to me they go in tandem. If you're entitled to a motion to dismiss, then, presumably, there is no injunction.

MR. BIZAR: Well, we consider the motion to dismiss,

1 your Honor, to be ripe in the sense that it's pending before
2 the Court, but it wasn't calendared for argument today. That
3 was my only observation.

4 THE COURT: Okay. We'll just hear the injunction
5 one.

6 MR. BIZAR: That's fine.

7 THE COURT: Right?

8 MR. RUSSELL: That was my impression, your Honor.

9 THE COURT: I'll hear you.

10 MR. RUSSELL: Thank you, your Honor.

11 This was a matter that was originally filed in the
12 Norfolk Superior Court and as traditionally --

13 THE COURT: Let me ask you, what is the basis of your
14 statement that there's a likelihood of success on the merits?
15 I understand the irreparable harm.

16 MR. RUSSELL: Correct.

17 THE COURT: So, if you would give me a little bit of
18 the history of this, I would appreciate it, and then what --
19 how do you get to likelihood of success on the merits?

20 MR. RUSSELL: Will your Honor indulge me in backing
21 up? I had a couple of statements before we got to that piece.

22 THE COURT: I'm sorry?

23 MR. RUSSELL: Would your Honor indulge me in a little
24 groundwork prior to that piece?

25 THE COURT: Sure.

1 MR. RUSSELL: When this matter was originally filed,
2 there was an active pending foreclosure auction that was
3 published. It was an August 1st foreclosure auction.

4 THE COURT: Could you keep your voice up, please?

5 MR. RUSSELL: Sure, I'll try.

6 THE COURT: There is a microphone there if you need
7 it. You can just pull it wherever you want and raise it up.

8 COURTROOM DEPUTY CLERK URSO: I shut it off.

9 MR. RUSSELL: It's a rarity that a lawyer is
10 soft-spoken.

11 THE COURT: It doesn't work?

12 COURTROOM DEPUTY CLERK URSO: No. I pulled it out
13 and I shut it off because usually we don't use them and they
14 make that buzzing noise.

15 MR. RUSSELL: I'll speak louder.

16 So, at the time that the injunction was requested,
17 there was an active filed foreclosure auction. Foreclosure is
18 initiated in the Commonwealth under statute when there's a
19 publication of the auction sale.

20 There was a defect in the publication in which the
21 publication was published in a paper that does not have
22 sufficient or any circulation in the locality of where the
23 plaintiff's property is. So, therefore, there is no current
24 auction that is scheduled, your Honor.

25 THE COURT: Well, in that case, what are we doing?

1 MR. RUSSELL: Correct.

2 At the time that I renewed the auction -- or the
3 motion for preliminary injunction, I had no affirmative
4 statements in writing that, in fact, the defendant's position
5 is that it was not published correctly.

6 In the opposition to the preliminary injunction, it
7 would seem to appear that they concede that issue, and they
8 say that it can be rectified by republication. Therefore,
9 there is no auction under statute currently pending, your
10 Honor.

11 THE COURT: There is also, as I understand it, an
12 agreement that so long as this proceeding is around, they're
13 not going to go, right? They're not going to seek
14 foreclosure.

15 MR. BIZAR: The agreement, your Honor, was that as
16 long as the proceeding remains pending, we would not seek to
17 foreclose, but as part of that agreement, there was a promise
18 made by the plaintiff that they would fund an escrow. I think
19 about \$10,000 should be funded in the escrow right now, and
20 that they would inform the Court if for any reason the escrow
21 payments were not made. They have not so informed the Court,
22 but I haven't actually heard from opposing counsel that those
23 escrow payments have, in fact, been made.

24 And we oppose the relief he's requesting right now.
25 We do believe that the issues are ripe and not moot, and I

1 would like to be heard on that before the Court were to decide
2 to punt this to a later date.

3 THE COURT: Well, if there is an agreement not to
4 foreclose during the pendency of this action, I don't know why
5 I need to enter an injunction.

6 MR. BIZAR: Not the action, your Honor. The
7 agreement was we would not foreclose pending the outcome of
8 this application for a preliminary injunction, not the case,
9 just this preliminary injunction.

10 THE COURT: Okay. So long as I don't decide it,
11 you're not foreclosing. I mean, one way or the other. Either
12 I say yes, they're entitled to the injunction or I say I'm
13 going to sit on it.

14 MR. BIZAR: Well, your Honor, with all -- with great
15 respect, it would be inappropriate for the Court to
16 purposefully sit on a pending motion that the Court has an
17 obligation to decide under any circumstances. We have a right
18 to have the motion heard and decided by the Court in its
19 appropriate due course. So, I'm not sure the -- what the
20 Court's position is about that.

21 MR. RUSSELL: May I respond to that?

22 THE COURT: Yes.

23 MR. RUSSELL: That's a condition precedent that
24 there's an auction. The plaintiff would say what would be the
25 ultimate result of this Court's ruling, would be to go ahead

1 with the foreclosure, but there is none. There is no
2 currently scheduled foreclosure auction and, therefore, the
3 plaintiff's position --

4 THE COURT: There's nothing for me to do. Nothing
5 for me to decide.

6 MR. RUSSELL: That is correct.

7 MR. BIZAR: That's not correct, your Honor.

8 THE COURT: I'm sorry?

9 MR. BIZAR: That's not correct.

10 So, the way this works is we have a statutory
11 obligation to give notice of a particular date for a
12 foreclosure sale, which we did. When we gave that statutory
13 notice, borrower's counsel filed an action to enjoin the
14 foreclosure.

15 There's only a small window of time between when the
16 notice is given and when the sale occurs. The sale could not
17 occur because of the motion and the agreement that was entered
18 into to have the motion adjudicated by this Court.

19 So, as a result, the motion -- excuse me. As a
20 result, the foreclosure sale did not occur. In order for a
21 foreclosure sale to occur, we have to re-notice it.

22 If the Court decides that there's nothing to worry
23 about enjoining, if we just go back to the way things were
24 before we started, then we'll be -- where we'll be is that
25 Wells Fargo will re-notice the foreclosure, because we have a

1 legal right to. This is a non-judicial foreclosure state. In
2 the absence of an injunction, we can do that.

3 So, if we were to re-notice the foreclosure, as we
4 had done before, the same exact thing is going to happen. My
5 brother is going to file another injunction which is going to
6 cancel that scheduled foreclosure sale because we're going to
7 be back before this Court arguing, once again, over whether or
8 not this foreclosure can go forward.

9 There were a number of issues that counsel raised in
10 his motion for preliminary injunction besides just the one
11 that is mooted. The mooted one is did the notice actually
12 take place in the right town. That's moot because we have to
13 re-notice. When we re-notice, we'll issue it in a different
14 town. When we issue it in a different town, he can then come
15 back and he can challenge as to whether or not he thinks that
16 was issued in the correct town or not.

17 But he's also going to bring again, presumably, all
18 the same challenges he has pending before the Court now. Why
19 I say "presumably" is he hasn't withdrawn. If he says
20 withdrawn with prejudice, I'm never going to bring them again,
21 which he's not going to do, they're not moot. They're not
22 moot because he's not going to withdraw.

23 So, we'll have to pay, because we paid for this, to
24 schedule another foreclosure sale. We're going to end up
25 having the next foreclosure sale cancelled after having

1 expended those expenses, which is not in Wells Fargo's best
2 interests, nor his clients because Wells Fargo would seek to
3 hold his client liable for those expenses pursuant to the
4 terms of the loan agreement.

5 What the Court should do and what it's appropriate to
6 do is to adjudicate the issues that are live and remain
7 pending before the Court. Counsel admits they're pending
8 before the Court. He just says they're really moot because
9 we're going to have to re-notice. They're pending before this
10 Court. He won't withdraw them. And when the Court decides
11 those, if the Court decides, yes, Wells Fargo can foreclosure,
12 we issue another notice. If the time --

13 THE COURT: I'm not going to say Wells Fargo may -- I
14 mean, the question before me is to prevent them. I'm not
15 going to say it may do it.

16 MR. BIZAR: Well, yes, your Honor, you're correct.
17 If the Court denies the motion for preliminary injunction,
18 then Wells Fargo will re-notice the foreclosure and we'll go
19 back to our non-judicial foreclosure activity.

20 If the Court wants to find today that, no, you know,
21 what? I prefer that you all just go back to where you were,
22 then what we would ask is that, fine, we'll go ahead and
23 re-notice the foreclosure now and we'll come back again when
24 he files his new application, but the Court's order and our
25 agreement had a requirement that they continue to protect

1 Wells Fargo in the amount of \$2500 a month in a surety amount
2 and I would make the motion --

3 THE COURT: That's for taxes and insurance?

4 MR. BIZAR: Well, yes, your Honor.

5 Wells Fargo has already come out of pocket in this
6 matter at least \$18,870.59 for taxes and insurance for the
7 premises. The borrower has been living in the premises for
8 over two years completely cost free. So, we're going to --

9 THE COURT: No payments of any kind are being made?

10 MR. BIZAR: The only payments of any kind that have
11 been made since more than two years ago should be the \$10,000
12 over the last few months paid into my brother's escrow fund
13 pursuant to the agreement that was reached, which he has not
14 confirmed that the payments were made. I would like him to do
15 that, but that's all -- that's it. Nothing else.

16 THE COURT: Let me hear from your brother.

17 MR. RUSSELL: Thank you, your Honor.

18 As a condition precedent, the \$2500 a monthly was
19 issued by the judge in Norfolk Superior Court, Judge Brassard,
20 based on the condition precedent that there was a legally
21 valid auction notice published. Under statute -- under §244,
22 Section 14, it has to be published in the correct local paper,
23 and Judge Long in the original *Ibanez* case, which I was a part
24 of, issued a very detailed statement as to what locality
25 means. In that case it was published in the Boston Globe,

1 which Judge Long found was appropriate. Here we have -- I
2 would take it as an admission. My brother may take it
3 otherwise. But reading the papers would indicate that, in
4 fact, it was void ab initio.

5 THE COURT: Well, what difference does it make? They
6 can issue a new one.

7 MR. RUSSELL: Correct, but the injunction -- my
8 brother just said that the auction was stopped because of that
9 injunction. That is an incorrect statement of law, because if
10 they went ahead and -- went ahead with that foreclosure, it
11 was a wrongful foreclosure and --

12 THE COURT: Well, perhaps, but it didn't go forward.

13 MR. RUSSELL: Correct.

14 THE COURT: So, what do you want me to do?

15 MR. RUSSELL: I would say that this current
16 particular proceeding is moot because there is no auction.
17 Under statute, the foreclosure process does not start until
18 the publication occurs.

19 THE COURT: Do you say that they're entitled to start
20 a new auction proceeding now, a new foreclosure proceeding?

21 MR. RUSSELL: I cannot stop them from doing that. If
22 they do so, then -- and then the foreclosure process would
23 begin anew for the first time because initially it never
24 occurred under statute.

25 THE COURT: What difference does that make?

1 MR. RUSSELL: The difference is that the moneys that
2 my brother said are due are not due because there was never
3 any auction. There was never any valid auction under statute,
4 and that it's very clear under §244, 14 --

5 THE COURT: I don't understand that. I thought the
6 parties agreed that there wouldn't be an action under the
7 circumstances that existed at the time.

8 MR. RUSSELL: Because that was -- it was thought to
9 be -- it was our argument that it was not a valid auction, but
10 the Court viewed it as it was a valid auction. Subsequent to
11 that hearing, it's been determined that it was not a valid
12 auction. Therefore, all of those statements regarding a valid
13 auction are moot.

14 THE COURT: So, they can just -- hold it.

15 So, they can just go forward now and order a new --
16 call for a new auction and notice a new auction in the Globe.

17 MR. RUSSELL: Correct.

18 THE COURT: And then what?

19 MR. RUSSELL: But at that point it becomes a live
20 controversy. There's no foreclosure auction. What my brother
21 is asking is for this Court to make an advisory opinion --

22 THE COURT: Let me cut to the chase. What are you
23 really looking for? I gather we have a homeowner --

24 MR. RUSSELL: Yes.

25 THE COURT: -- that has been living in the home for

1 two years now without any making payments either for the
2 mortgage principle and interest or for the taxes or for the
3 insurance.

4 MR. RUSSELL: But as a condition precedent we have to
5 know who she would have to pay. That is our secondary
6 argument. There is not -- there is not a local bank where she
7 took out a loan, your Honor, respectfully stated. I know my
8 brother's position is that it's Wells Fargo. It was
9 originally World Savings and Wachovia, but --

10 THE COURT: Well, has she paid it into escrow pending
11 determination of who is the proper payee?

12 MR. RUSSELL: I have -- I can tell you -- I can state
13 for the Court, under the agreement I received two payments and
14 I received the second two payments today, which I have a check
15 in my pocket. So --

16 THE COURT: I know, but we're talking about two years
17 worth of principle, interest, taxes and insurance, I gather.

18 MR. RUSSELL: Correct, to the party that owns the
19 rights to those things.

20 THE COURT: I know, but if you dispute that, you
21 normally would pay the amount that you owe into escrow pending
22 the determination of who the proper payee is. That wasn't
23 done here, was it?

24 MR. RUSSELL: That was not.

25 THE COURT: So, it's not clear to me exactly where we

1 are.

2 I gather your position is that there is nothing
3 before me, although there is a motion for an injunction filed
4 by you, and there is now a motion to dismiss which will be
5 ripe by the end of the month.

6 MR. RUSSELL: That's correct, your Honor.

7 THE COURT: That's right?

8 MR. RUSSELL: That is correct.

9 And in the plaintiff's defense, the only reason -- I
10 renewed the motion when it was removed to this Court to the
11 preserve her rights. Subsequent to that I did only fairly
12 recently receive the affirmation in the defendant's pleadings
13 that, in fact -- regarding the auction itself. So, therefore,
14 I would have withdrawn the motion earlier, but it was due to
15 that fact, although there was no assertion to me that, in
16 fact -- that that was their position.

17 THE COURT: Anything else on the merits of the motion
18 for an injunction?

19 MR. RUSSELL: I just -- in the papers I -- the
20 plaintiff's position is that it will be pretty much
21 duplicative of what I'm going to be filing by the end of the
22 week with regards to the motion to dismiss. There are
23 overlapping issues. So, that would be the plaintiff's
24 position.

25 THE COURT: Okay.

1 MR. RUSSELL: Thank you, your Honor.

2 THE COURT: Thank you.

3 Mr. Bizar -- is it *Bizar*?

4 MR. BIZAR: *Bizar*, your Honor. Thank you.

5 Your Honor, the parties filed a joint...

6 THE COURT: What else do I need to know about the
7 motion for the injunction?

8 MR. BIZAR: Well, your Honor, the parties filed a
9 joint motion to amend the briefing schedule in this case.
10 It's Docket Entry No. 15, which sets forth the parties'
11 agreement on the escrow. So, to the extent the Court has
12 questions about what that agreement was, it's set forth in a
13 joint filing at Docket Entry 15, and what we agreed to is that
14 the plaintiff would continue to pay the \$2500 monthly surety
15 payments while the TRO remains in effect.

16 So, my point to the Court was as long as we're
17 restrained from initiating foreclosure proceedings, they're
18 supposed to be paying the \$2500. So, the only thing I would
19 ask is that I leave today with a clear understanding of are we
20 or are we not enjoined either by a temporary restraining order
21 or by a preliminary injunction from re-initiating the
22 foreclosure process or is the Court either deciding the
23 application for preliminary injunction or not. I just am
24 unsure from the Court's questioning of the parties what the
25 Court proposes to do.

1 THE COURT: I'm trying to understand what the parties
2 want and what the parties' position is and I'm having some
3 difficulty with that.

4 MR. BIZAR: Your Honor, if may assist the Court with
5 that. I understand my brother may want the Court to --

6 THE COURT: To do nothing.

7 MR. BIZAR: -- to do nothing and --

8 THE COURT: But he understands that when the motion
9 to dismiss is ripe, then I have to do something.

10 MR. BIZAR: Correct, your Honor.

11 And what we're asking the Court to do is to
12 adjudicate either -- either he should withdraw the motion for
13 preliminary injunction which he says is moot, then he should
14 withdraw it and it's over and then we'll go forward from
15 there, or the Court should adjudicate the pending motion
16 before the Court. Motions for preliminary injunction are
17 ordinarily entitled to a quick review by a court for obvious
18 reasons. We are right now under an agreement restrained from
19 going forward.

20 THE COURT: Are you withdrawing your motion?

21 MR. RUSSELL: The response to that is, your Honor,
22 he's not restrained. That was with regards -- the restraining
23 order was with specific regards to the August 1st, 2013
24 auction.

25 THE COURT: Okay. Well, I'm not going to be able to

1 sort that out because I wasn't there and I don't have a record
2 of it.

3 MR. RUSSELL: I understand and I apologize for that,
4 your Honor.

5 THE COURT: But, in any event, the position now is
6 that there is a motion for a restraining order that you say is
7 moot, in a sense. Motion to enjoin a foreclosure that you say
8 is moot, but you're not going to withdraw it?

9 MR. RUSSELL: Because there is -- there is nothing to
10 restrain, your Honor. Currently there's no auction sale to
11 restrain. There's nothing --

12 THE COURT: But I can restrain their attempt to have
13 an auction.

14 MR. BIZAR: Exactly.

15 MR. RUSSELL: That's his separate issue, your Honor.

16 THE COURT: No, it isn't. It's part of the same
17 thing.

18 MR. RUSSELL: But the plaintiff's argument was to --
19 initially it was filed to stop that auction. He has yet to
20 file the new notice. So, there is no auction -- there's
21 nothing to restrain.

22 THE COURT: Okay.

23 MR. RUSSELL: There's nothing to prevent him from
24 doing that.

25 THE COURT: Okay. Anything else, Mr. Bizar?

1 MR. BIZAR: Your Honor, my brother concedes, as I
2 hear him saying, that there is no order, rule, nothing,
3 prohibiting Wells Fargo from proceeding or to re-notice the
4 foreclosure. We'll re-notice the foreclosure and the Court
5 need not decide the papers today, but I would ask that the
6 escrow payments continue during this process, which I hear my
7 brother saying he doesn't want to do it.

8 MR. RUSSELL: There would have to be --

9 THE COURT: Well, that's not a matter before me.

10 He says this motion is moot or it's not ripe. He
11 says it's moot, but he won't withdraw it. And you want to
12 have payment under an agreement that you have made with him,
13 about which I really don't have any particular knowledge.

14 I suggest you talk to each other and make sure that
15 it works out. In the meantime, I will not -- you know, I will
16 take the papers and -- I gather you're planning to file an
17 opposition to the motion to dismiss by the end of the month,
18 which is the time it's due.

19 MR. RUSSELL: That is correct, your Honor.

20 MR. BIZAR: Your Honor --

21 THE COURT: Then I will decide that, too.

22 MR. BIZAR: Let me just ask the question outright.

23 May Wells Fargo re-notice the foreclosure without
24 running afoul of the Court?

25 THE COURT: I'm not giving advice. I mean, that's

1 not my function.

2 MR. BIZAR: Your Honor -- okay.

3 Here's the problem I have. There is a pending --
4 there is an agreement memorialized in Exhibit -- I'm sorry --
5 in Document Entry No. 15 that says -- we're bound by this
6 agreement.

7 (Discussion off the record at the bench.)

8 COURTROOM DEPUTY CLERK URSO: Sorry.

9 THE COURT: Sorry.

10 MR. BIZAR: No problem.

11 "The parties" -- this is at Paragraph 8. This is an
12 agreement --

13 THE COURT: Paragraph of what?

14 MR. BIZAR: The Document Entry No. 15, which is a
15 joint --

16 THE COURT: This is the motion for an extension of
17 time?

18 MR. BIZAR: The joint motion to amend the briefing
19 schedule on plaintiff's motion for preliminary injunction.

20 THE COURT: Okay.

21 MR. BIZAR: And at Paragraph 8, quote, "The parties
22 have agreed that the temporary restraining order will remain
23 in effect until this Court decides the plaintiff's motion for
24 preliminary injunction," unquote.

25 I am bound by that agreement. My client is bound by

1 that agreement. We cannot re-initiate the foreclosure until
2 the Court decides that the motion for preliminary injunction
3 is good, no good, moot, not moot. I need a decision from the
4 Court in order to be able to not violate the agreement that
5 was put before this Court. That's my problem.

6 THE COURT: Okay. I'll look at that, too.

7 MR. BIZAR: Well, your Honor, you're leaving me in
8 limbo then. I can't do anything.

9 THE COURT: I'm leaving you in limbo as I leave every
10 bunch of litigants in limbo until I decide the matter, but I
11 have to look at the papers to decide it and I haven't seen
12 this paper yet.

13 MR. BIZAR: I guess, your Honor, the reason why I'm
14 saying I'm in limbo is I don't know whether the Court intends
15 to decide the matter or not because the Court appears inclined
16 not to decide the matter.

17 I've never had this happen in a 20-year law practice.
18 That's why you're getting some feedback from me, because I
19 don't know, based on what the Court is telling me, what the
20 Court intends to do.

21 THE COURT: Well, because I haven't decided it. I'm
22 taking the papers so I can look at them and study them and
23 then, hopefully, make a correct decision.

24 MR. BIZAR: Then, your Honor, may we be heard on the
25 merits of the motion, which we have not been heard on yet?

1 THE COURT: I'm sorry?

2 MR. BIZAR: We may then be heard on the merits of the
3 motion, your Honor, which --

4 THE COURT: Which motion?

5 MR. BIZAR: The motion for preliminary injunction.

6 THE COURT: That's what we were here for today.

7 MR. BIZAR: Yes, your Honor. Then I would like to be
8 heard on the merits of the motion.

9 THE COURT: I just invited you a moment ago to argue
10 to the motion.

11 MR. BIZAR: I'm prepared --

12 THE COURT: You have five minutes because I have
13 another case.

14 MR. BIZAR: Thank you.

15 Your Honor, the motion for preliminary injunction
16 should be denied for the reasons set forth in our papers.
17 Wells Fargo has demonstrated standing. The preliminary --
18 what the Court started off talking about, what the Court looks
19 to first is likelihood of success on the merits on one of
20 these motions, and the plaintiff has a heavy burden and he
21 hasn't carried his burden.

22 Wells Fargo clearly has standing. Wells Fargo has
23 been the owner and holder of both the note and the mortgage
24 from their inception. The note and the mortgage, per
25 affidavit of Michael Dolan submitted with our papers, has

1 never been transferred to anyone. Never been transferred to
2 anyone. It has always been with the same bank. The
3 originating bank was World Savings Bank, F.S.B. World Savings
4 Bank, F.S.B. merged into Wachovia Mortgage, F.S.B. Wachovia
5 Mortgage, F.S.B. merged into Wells Fargo Bank Southwest, N.A.,
6 which changed its name and merged into Wells Fargo Bank, N.A.,
7 and we've briefed that in an affidavit showing the progression
8 of one bank to the next, changing its name, all the mergers,
9 and there is absolutely no proof that's been submitted by my
10 brother to show that those affidavits are not correct.

11 Many courts have recognized the progression as we
12 have briefed. There's never been a transfer. There's never
13 been an assignment. The mortgage has always been held by the
14 same bank.

15 We have an affidavit that says that the note is
16 currently held by that same bank and always has been. My
17 brother disputes that. He's got no proof. He has to have
18 proof. It's his burden. All he has is argument. There is no
19 proof whatsoever before the Court, not even an affidavit,
20 nothing.

21 So, your Honor, we have established our standing.
22 Under *Ibanez*, all we have to show is that we are the owner and
23 holder of the note and mortgage, which we have. Under *Eaton*,
24 all we have to show is that we were the holder of the note and
25 mortgage on the date that the foreclosure was commenced, which

1 we've shown. So, there's nothing left to show. It's all
2 before the Court right now in the papers.

3 All of the other arguments that my brother raises are
4 well addressed in our papers. I'd be pleased to answer any
5 questions that the Court may have. Thank you for your time.

6 THE COURT: Thank you very much. And I will take the
7 papers.

8 MR. BIZAR: Thank you.

9 THE COURT: Thank you.

10 And you, too.

11 MR. RUSSELL: Thank you, your Honor.

12 (Adjourned, 2:33 p.m.)

13
14 C E R T I F I C A T E

15 I, Catherine A. Handel, Official Court Reporter of
16 the United States District Court, do hereby certify that the
17 foregoing transcript, from Page 1 to Page 24, constitutes to the
18 best of my skill and ability a true and accurate transcription
19 of my stenotype notes taken in the matter of Civil Action No.
20 13-11896-RWZ, Elizabeth R. Lewis versus Wells Fargo Bank, N.A.,
21 et al.

22
23
24 December 19, 2013
25 Date

/s/Catherine A. Handel
Catherine A. Handel, RPR-CM, CRR